

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF PENNSYLVANIA - PHILADELPHIA

IN THE MATTER OF: . Case #21-11750-MC
·
MIDNIGHT MADNESS DISTILLING, . Philadelphia, PA
INC., .
· September 15, 2021
Debtor. . 1:52:45 p.m.

TRANSCRIPT OF HEARING RE:
MOTION TO SELL PROPERTY FREE AND CLEAR OF LIENS UNDER SECTION
363(F) AND SOME OTHER RELIEF THAT IS REQUESTED, FILED BY
MIDNIGHT MADNESS DISTILLING, LLC
BEFORE THE HONORABLE MAGELINE D. COLEMAN, J.U.S.B.C.

APPEARANCES:

For the Debtor:	WILLIAM BURNETT, ESQ. HARRY GIACOMETTI, ESQ. Flaster Greenberg 1835 Market Street, Suite 1050 Philadelphia, PA 19103
For MILLSTONE SPIRITS GROUP, LLC:	JOEL PERRELL, ESQ. PATRICIA JEFFERSON, ESQ. Miles and Stockbridge Law 100 Light Street Baltimore, MD 21202
PACCAR FINANCIAL TTB DEPARTMENT OF TREASURY BANKSHARES REALTY AGTECH ISUZU FINANCE OF AMERICA CITY OF PHILADELPHIA U.S. TRUSTEE ETOH WORLDWIDE LLC MIDNIGHT MADNESS DIST. WILLIAM F. COMLY & SON	Howard Gershman, Esq. Anthony St. Joseph, Esq. Jennifer Maleski, Esq. Matthew Hamermesh, Esq. Edward Sheintoch, Esq. Megan Harper, Esq. Kevin Callahan, Esq. Carrie Drangula, Esq. Casey Parzych, President Jim Comly

ELECTRONIC SOUND RECORDING OPERATOR: _____

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1 (At 1:52 p.m.)

2 THE COURT: So, this is Midnight Madness Distilling.
3 Before the Court today is the motion to sell property free
4 and clear liens under 363(F), and some other related relief
5 that is requested. I think that is the only matter that is
6 up for today. Correct?

7 MR. WILLIAM BURNETT: Yes, Your Honor.

8 THE COURT: Appearances please.

9 MR. BURNETT: Your Honor, William Burnett, and Harry
10 Giacometti, Flaster Greenberg, on behalf of the Debtor,
11 Midnight Madness.

12 MR. HOWARD GERSHMAN: Howard Gershman, on behalf of
13 Paccar Financial Corporation.

14 MR. ANTHONY ST. JOSEPH: Anthony St. Joseph, on
15 behalf of the TTB, Department of Treasury.

16 THE COURT: I'm sorry, what did you say, Mr. St.
17 Joseph:

18 MR. ST. JOSEPH: I'm sorry. On behalf of the TTB,
19 which is part of the Department of the Treasury, for the
20 United States.

21 THE COURT: And that's TTPB? Is that what you said
22 Mr. St. Joseph?

23 MR. ST. JOSEPH: I'm sorry, Your Honor, I quickly—

24 THE COURT: -- I know. I saw that you went on mute.
25 That's fine.

1 MR. ST. JOSEPH: I had gone to mute. Let me make
2 sure I actually have my client, that I am saying the name
3 correctly. Yes, T-T-B. So the - and this is the first time
4 I have represented them. So, the Alcohol Tobacco, Tax and
5 Trade Bureau, which is a - falls underneath the Department of
6 Treasury, Your Honor.

7 THE COURT: Okay. TTB?

8 MR. ST. JOSEPH: Yes, that is our acronym, TTB.
9 Which there are three t's in the name, but they only use two
10 t's in the acronym, TTB.

11 THE COURT: Okay. Hold on one second. Okay, I'm
12 back. So, Tobacco - and what is the other T?

13 MR. ST. JOSEPH: It's Tobacco, Tax, and Trade Bureau.
14 Actually, Alcohol, Tobacco, Tax and Trade Bureau.

15 THE COURT: All right.

16 MR. ST. JOSEPH: And we shorten it to TTB.

17 THE COURT: Okay. Who else?

18 MS. JENNIFER MALESKI: Good afternoon, Your Honor,
19 Jennifer Maleski, Dilworth Paxon, on behalf of Bankshares
20 Realty, LLC., which is the successor in interest to PNC Bank,
21 and PNC Equipment Finance, the current holders of the loans
22 given by those entities. But it is a PNC subsidiary. So
23 feel free to refer to us at PNC.

24 THE COURT: Okay, thank you.

25 MR. JOEL PERRELL: Good afternoon, Your Honor. Joel

1 Perrell, from Miles and Stockbridge, on behalf of Millstone
2 Spirits Group, LLC, the proposed Buyer, under the - pursuant
3 to the sale. With me today is Patricia Jefferson, also from
4 my firm, who has been admitted pro hac vice, in this case,
5 Your Honor, at docket number 158.

6 MR. MATTHEW HAMERMESH: Your Honor, Matthew Hamermesh,
7 of Hangley, Aronchick, Segal, Pudlin and Schiller,
8 representing ETOH Worldwide and Agtech.

9 THE COURT: Who is your second client, Mr. Hamermesh?

10 MR. HAMERMESH: Agtech, A-G-T-E-C-H.

11 THE COURT: Okay. Anyone else?

12 MR. EDWARD SHEINTOCH: Yes, Your Honor. Edward
13 Sheintoch, from Sheintoch and Sheintoch Law. I represent the
14 Isuzu Finance of America on one lease, and Tokyo Century
15 acquired another lease, equipment lease.

16 THE COURT: So, who do you represent, again?

17 MR. SHEINTOCH: The original leases, Your Honor, were
18 Isuzu Finance of America. And on one equipment lease it was
19 acquired by Tokyo Century, USA, Inc.

20 THE COURT: Counsel, could you hold one second.
21 Counsel, and I will apologize now, there are certain phone
22 calls that - that represent an emergency, that I will have to
23 take, if I receive one of those calls. Okay. I apologize,
24 Mr. Sheintoch, who do you represent again?

25 MR. SHEINTOCH: Thanks, Your Honor, and totally

1 understood. One lease it is Isuzu Finance of America, Your
2 Honor. And the original lease on the other one was Isuzu,
3 but it was assigned to a company called Tokyo Century.

4 THE COURT: Okay. Okay. Anyone else?

5 MS. MEGAN HARPER: Good afternoon, Your Honor. Megan
6 Harper for the city of Philadelphia.

7 THE COURT: Anyone else?

8 MR. KEVIN CALLAHAN: Your Honor, this is Kevin
9 Callahan, for the United States Trustee.

10 THE COURT: Anyone else?

11 MS. CARRIE DRANGULA: Good afternoon, Your Honor.
12 This Carrie Drangula, on behalf of ETOH Worldwide, LLC.

13 THE COURT: So, you are the representative, or are
14 you - of the company Mr. Hamermesh just is your client?

15 MR. DRANGULA: I am a representative of the company.

16 THE COURT: Yes.

17 MR. HAMERMESH: Yes, Your Honor.

18 THE COURT: Do we have any other representative of
19 any other parties?

20 MR. BURNETT: Your Honor, - Your Honor, this is
21 William Burnett again. I just wanted to say that I have my
22 client who will be testifying, Gary Parzych. And I have Jim
23 Comly as well, who will also be testifying, of Comly
24 Auctioneers.

25 MS. PATRICIA JEFFERSON: Your Honor, Patricia

1 Jefferson-

2 THE COURT: Hold on. Hold on one second.

3 MS. JEFFERSON: Certainly.

4 THE COURT: I'm sorry, who was - I interrupted, I
5 apologize. Who is this?

6 MS. JEFFERSON: Your Honor, Patricia Jefferson, on
7 behalf of Millstone Spirit Group. Mr. Perrell already
8 introduced me. I was admitted pro hac vice and I just wanted
9 to note, for the Court, that Robert Cassell, who is the
10 President of Millstone Spirit Group is appearing at the
11 hearing, although we don't anticipate any testimony from him.

12 THE COURT: So, you are - you represent the proposed
13 Buyer, together with Mr.-

14 MS. JEFFERSON: -- Perrell, that is correct.

15 THE COURT: -- Perrell. Am I pronouncing that
16 correctly, Perrell?

17 MR. PERRELL: Yes, Your Honor, Perrell, correct.

18 THE COURT: And Robert Cassell is the representative
19 of the proposed Buyer?

20 MS. JEFFERSON: That is correct.

21 THE COURT: Okay. So, Mr. Cassell is not on video.
22 Mr. Parzych is not on video.

23 MR. BURNETT: Your Honor, I think I made a mistake,
24 because I - I saw the box pickup. Casey Parzych is on video,
25 and he is the one that is testifying. I guess Gary is also

1 on the line, but he is not with MMD.

2 THE COURT: And who is Gary? Parzych right?

3 MR. BURNETT: Yes.

4 THE COURT: Who is he and why is he participating?

5 MR. BURNETT: I don't know why he is participating.

6 I believe he is Casey's father.

7 THE COURT: Mr. Parzych? Mr. Parzych, Casey Parzych,
8 is - so, Mr. Gary Parzych is participating because?

9 MR. CASEY PARZYCH: I'm not actually sure. He is a
10 leaseholder related to the Debtor. I wasn't expecting him.

11 THE COURT: I mean he's - I mean you can - I mean if
12 we were in court he could just come in. I'm just wanting to
13 know what his role was. Is he just observing, Mister - Mr.
14 Parzych, Gary Parzych, are you just observing? What - why
15 are you here today? Hello?

16 JOHN: Judge, this is John. He may be on a desktop
17 computer and does not have working microphone. He actually
18 sent a private chat message earlier that he couldn't hear us.
19 So, I am wondering if it is because of something like that.

20 THE COURT: Okay. All right. I mean you can come in
21 the court and observe. I just like to know who is here and
22 why, that's all. Okay. All right. So, is there anybody
23 else? Let's see, Mr. Cassell is for, representing the
24 proposed Buyer. Did everybody enter their appearance or been
25 identified? I think so. Okay. All right. Mr. Burnett are

1 you or Mr. Giacometti handling the sale motion?

2 MR. BURNETT: Your Honor, I will be principally,
3 maybe exclusively, but principally for certain.

4 THE COURT: Okay.

5 MR. BURNETT: May I proceed?

6 THE COURT: Well, first tell me where are we, because
7 I know there were some limited objections filed. And I am
8 not quite sure [inaudible] with them. I didn't see anything
9 [inaudible]. So, tell me where we are.

10 MR. BURNETT: Your Honor, I am - we are generally -
11 have what I believe is an uncontested sale hearing, virtually
12 uncontested. I think all of the objections have been
13 resolved. If I might, if I could give about a five minute
14 sort of overview of where we are in the process.

15 THE COURT: Okay.

16 MR. BURNETT: My thought process is to give a slight
17 overview, and then to yield to Ms. Jefferson, who represents
18 the Buyer, to talk about all the work that she has done
19 resolving the objections. And then to go to the proffers.
20 If - if appropriate. I mean obvious-

21 THE COURT: -- Okay. That's fine.

22 MR. BURNETT: Okay. So, Your Honor, like I said,
23 William Burnett, Flaster Greenberg, on behalf of MMD, the
24 Debtor, Chapter 11 Debtor here. So, Your Honor, as I said,
25 we had largely an uncontested sale hearing today. There have

1 been several objections that have been filed, over the last
2 several weeks. Most notably PNC, the U.S. Trustee, TTB,
3 Isuzu and Paccar. And those have been fully resolved, or
4 largely resolved, as I understand it, and we can go through
5 that as this goes on.

6 What this sale hearing really is, Your Honor, is a
7 363 sale process that worked really as bankruptcy has
8 intended it to work. We had a stalking horse bid that was
9 marked very widely by Comly and the good work that Jim Comly
10 has done. And it yielded many expressions of interest, which
11 resulted in an auction that - that had three bidders,
12 including the stalking horse. And the price, for the
13 purchase price of the assets went from 1.025 million to 1.4
14 million dollars, plus a substantial other consideration that
15 the winning bidder, Millstone, is offering.

16 All parties worked together showing flexibility, hard
17 work and willingness to get this done. The objectors and
18 most notably the successful bidder, Millstone, and their
19 counsel, Patty Jefferson.

20 So, what we have done, Your Honor, is, just to back
21 up, we filed the sale motion on the first day. Some of the
22 deadlines got pushed back a bit. We needed to do that to
23 accommodate the bidders, to accommodate the process. We did
24 that on notice to the creditors, on notice to potential
25 interested parties, and so, we had an auction on the 25th of

1 August, which yielded this result, which I will go through in
2 a minute. The stalking horse bid, which was originally filed
3 with an APA needed to be changed to, in order to harmonize
4 the bids between the stalking horse and the ultimate
5 successor, Millstone. A lot of that was done on the record,
6 at the auction. And then had to be memorialized and tweaked
7 a bit to adjust for all of the subsequent objections, which
8 were filed and or on record.

9 And I am going to give a very brief highlight, very
10 high level overview of where we are with the objections. The
11 documents, of course, speak for themselves. And some of the
12 details are a lot more specific.

13 But basically what we have the sale, as I said, is
14 for 1.4 million. And the - what it does is the sale gives
15 \$50,000.00 available to the estate, which Millstone has
16 agreed to carve out, to make available for creditors. And
17 PNC is backstopping this to ensure that it occurs. And we
18 can go through the details, but I am just giving you a high -
19 high level view.

20 There is a provision, in the Millstone agreement that
21 pays for the Agtech and ETOH leases. There were post-
22 petition charges that were accruing but not being paid. And
23 there is a provision that Millstone will pay those
24 administrative claims of Agtech and ETOH subject to a court
order, from this Court, subject to a Motion Court Order, and

1 you know, whatever hearing and objection process there is.
2 That is specified in the document.

3 There is also a carve out provided, in the - in the
4 Sale Order and purchase agreement, for up to \$300,000.00 to
5 pay trailing administrative claims. And the concept here is,
6 Your Honor, that after the closing of the sale, there won't
7 be administrative claims, Chapter 11 accrued administrative
8 claims left unpaid. The concept is that, you know, the trade
9 creditors will be paid, the administrative claim creditors
10 will be paid, and this will not be an administratively
11 insolvent case. PNC and Millstone, as well as the U.S.
12 Trustee worked hard to have that happen.

13 Also, there is a closing schedule to occur by the
14 30th of September. And there are some other bits and pieces,
15 details where the Debtor is providing a vendor list and
16 employee list, and the TTB has the - excuse me, the Debtor is
17 also providing TTB formulas as well, a list of those. Those
18 are new provisions from the - from the original stalking
19 horse. Of course this is an "as is" "where is" sale, as
20 provided in the APA. And there were a couple changes to the
21 assumed contracts that were made from the stalking horse to
22 today.

23 But basically, through the changes that were made,
24 through discussions that were had, that, you know, we can go
25 through each of the objections that were lodged and - and I

1 would like to yield to Ms. Jefferson to kind of go through
2 all the hard work that she did, to iron all those things out,
3 as represented in the Sale Order and the, to a lesser extent,
4 in the APA. If I might.

5 THE COURT: Okay.

6 MS. JEFFERSON: Thank you, Your Honor. Patricia
7 Jefferson, again, on behalf of the proposed Buyer, Millstone
8 Spirits Group. Your Honor, I thought it might be most
9 efficient for me to just walk through the various objections
10 that were filed, explain how they have been resolved, and
11 then, to the extent that I have not accurately represented
12 anything, I believe each of those objecting parties is
13 represented on the record here today, and they can - they can
14 correct me if need be.

15 THE COURT: Okay.

16 MS. JEFFERSON: The first objection was the limited
17 objection file by Paccar Financial Corporation, docket 75.
18 They filed a supplemental objection at docket number 134.
19 The basis for that objection is that Paccar is a secured
20 creditor and holds a purchase money security interest in two
21 vehicles that were included in the sale. The contract gave
22 its assignment, and Paccar did not consent, absent a credit
23 application.

24 By way of resolution, Millstone has submitted the
25 requested credit applications and has been approved by Paccar

1 for credit. And so, between now and the closing date,
2 Millstone and Paccar will finalize and execute any necessary
3 paperwork for new documentation. But I believe that
4 objection is resolved. The --

5 MR. GERSHMAN: -- If you want me to confirm, on
6 behalf of Paccar, yes, Ms. Jefferson is correct. And to that
7 extent, we concur with the sale, and withdraw or objection.

8 THE COURT: Okay. So, that is withdrawn. Are you
9 withdrawing the objection 75 and - is it 134, the supplement?

10 MS. JEFFERSON: Yes, 134.

11 THE COURT: Okay. Okay.

12 MS. JEFFERSON: The next objection that was filed was
13 the objection by PNC Bank, NA, and PNC Equipment Finance LLC,
14 which was docket number 76. That was filed prior to the
15 auction. And many of the issues that were raised related to
16 the form of the auction itself, and the original proposed
17 sale to the stalking horse bidder. It is my understanding
18 that all of the remaining issues have been resolved, to PNC's
19 satisfaction, and that the PNC objection is being deemed
20 withdrawn as well.

21 MS. MALESKI: Your Honor, Jennifer Maleski, on behalf
22 of, I'll just say, PNC. I can confirm that we have resolved
23 all issues, with Ms. Jefferson's client, through language in
24 the proposed Sale Order, and Asset Purchase Agreement,
25 subject to approval of that order and Asset Purchase

1 Agreement as proposed, PNC's objection can be deemed
2 withdrawn. We do reserve the rights, if there is any changes
3 to the language that has been negotiated.

4 THE COURT: Okay.

5 MS. JEFFERSON: The next objection that was filed is
6 the objection of the United States of America, on behalf of
7 the Alcohol, Tobacco, Tax and Trade Bureau, which we are
8 referring to today as the TTB. That is docket 139. The
9 basis for that objection was twofold.

10 First, they objected because the original proposed
11 sale to the stalking horse bidder, they argued, violated
12 27CFR1.80 that prohibits the sale of distilled spirits in
13 bulk, except to certain enumerated classes of parties. And
14 the second basis for the objection, by the TTB, was that the
15 sale of the inventory was proposed to be free and clear of
16 all liens. However, the government holds a lien for excise
17 tax that comes into existence at the time the spirit is
18 created, and is not payable until the sprits are withdrawn
19 from a bonded premises.

20 In order to address both of those issues, Millstone
21 provided counsel to the United States, and the TTB, a copy of
22 Millstones' TTB permit that has satisfied the TTB that
23 Millstone is a party that is approved as a matter of federal
24 law, to receive possession of distilled spirits in bulk.

25 With respect to the issue of the sale clear and free

1 of liens, the Asset Purchase Agreement, and the proposed Sale
2 Order, specifically decretal paragraph five, provide that any
3 inventory to which a lien for excise tax has attached, shall
4 be sold to Millstone subject to that lien. And the United
5 States has been added to Schedule 103 of the Asset Purchase
6 Agreement, as an assumed liability.

7 With those changes, I believe that the objection of
8 the TTB has been resolved. And counsel to the TTB has
9 reviewed and signed off on the proposed language.

10 MR. ST. JOHN: Your Honor, this is Anthony St. Joseph,
11 for the TTB. Just concurring and withdrawing our objection
12 based on the agreement we have reached with counsel for the
13 purchaser.

14 THE COURT: Okay.

15 MS. JEFFERSON: Thank you, Your Honor. For a moment,
16 I am going to - I am going to skip, chronologically, the
17 objection of the United States Trustee, and if it is okay,
18 take that one last.

19 THE COURT: Okay.

20 MS. JEFFERSON: And so, the next objection was docket
21 144, the limited objection of Isuzu Finance of America, Inc.
22 The basis for that objection was similar to the objection
23 filed by Paccar, except that the Isuzu term of its agreement
24 expired in August. We have agreed that Isuzu can pick up its
truck and that that particular vehicle will be carved out of

1 the sale, which I believe resolves Isuzu's objection.

2 And coupled with that is the objection filed at
3 docket 145, which is the limited objection of Tokyo Century
4 USA, Inc., an affiliated party. The same basis for the
5 objection, except that with respect to that particular truck
6 Millstone will be submitting the necessary credit
7 applications and between now and the closing date, we will
8 either allow Tokyo Century USA to - we will have an agreement
9 that they can pick the truck up, or they will approve our
10 credit application and - and we will move forward in the same
11 way that we are moving forward with Paccar.

12 THE COURT: Okay.

13 MS. JEFFERSON: Mr. Sheintoch, I think you are on
14 mute. I don't know if you wanted to weigh in.

15 MR. SHEINTOCH: Your Honor, Ms. Jefferson has
16 properly stated our agreement, and we will withdraw our two
17 limited objections. Thank you.

18 THE COURT: Okay.

19 MS. JEFFERSON: The next objection is the limited
20 objection filed at docket 170, by Agtech IV LLC and ETOH
21 Worldwide LLC. Agtech and ETOH were the stalking horse
22 bidders. They objected to the extent that the Asset Purchase
23 Agreement and Sale Order don't provide for payment of their
24 administrative expense claims and payment of their expense
25 reimbursements.

1 By way of resolution, Section 103(d) of the Asset
2 Purchase Agreement does provide that Millstone shall pay the
3 administrative expense claims of Agtech and ETOH, upon them
4 filing a motion, and entry of an order allowing the claim.
5 Section 105 of the Asset Purchase Agreement provides for
6 payment of the expense reimbursement up to \$100,000.00 once
7 that expense reimbursement is approved by the Court.

8 And so, while I have not had direct conversation,
9 with Agtech and ETOH's counsel, regarding their objection, I
10 do believe that the terms of the Asset Purchase Agreement,
11 and the proposed Order should resolve their concerns about
12 payment of those claims.

13 MR. HAMERMESH: Your Honor, this is Mr. Hamermesh.
14 So, though the proposed order and the Asset Purchase
15 Agreement do address those two issues, there was another
16 issue we raised in our limited objection, which is that the
17 expense reimbursement provision, in the bidding order,
18 requires that we file a request for expense reimbursement
19 shortly after the closing happens. So, I just wanted to -
20 what I was - wanted to ask Ms. Jefferson and Mr. Burnett, for
21 assurance that I would be advised when the hearing - when the
22 closing is scheduled, and within 24 hours that it happened,
23 so that we can meet the deadline in the bidding procedures.

24 MS. JEFFERSON: You will - we will certainly agree to
25 provide written notice, to Mr. Hamermesh, of the proposed

1 closing date, and then, on the closing date confirming that
2 it has actually occurred.

3 MR. HAMERMESH: That's fine, thank you.

4 MR. BURNETT: Is that enough? We don't need to
5 change the Order to reflect that?

6 MR. HAMERMESH: No.

7 MR. BURNETT: Okay.

8 MS. JEFFERSON: So, with that, Your Honor, I believe
9 the objections filed at docket 170 can be deemed satisfied.

10 THE COURT: Mr. Hamermesh? That's - she said that-

11 MR. HAMERMESH: -- Yes.

12 THE COURT: -- [inaudible] deemed satisfied. Which
13 one?

14 MR. HAMERMESH: We will withdraw it, with the
15 assurance - give the form of the purchase order and the Asset
16 Purchase Agreement, and the assurance about notice of the
17 closing, we will withdraw it.

18 THE COURT: Okay.

19 MS. JEFFERSON: Your Honor, the final objection is
20 the objection filed by the United States Trustee, at docket
21 140. There were a number of issues raised in that objection,
22 three specifically.

23 The first being a concern regarding the sale of the
24 Debtors Chapter 5 causes of action. The second concern being
25 whether or not the sale would render the estate

1 administratively insolvent. The third concern being whether
2 there was sufficient information to determine whether there
3 is a legitimate bankruptcy purpose to the sale.

4 Addressing each of those in turn, Section 1.01k of
5 the Asset Purchase Agreement, and decretal paragraph 10 of
6 the Sale Order, limit the Chapter 5 causes of action being
7 sold to the Buyer to those actions against the Buyer, its
8 affiliates, and the holder of any assumed liability. There
9 should not be any cause of action against the Buyer or its
10 affiliates, because they had no prebankruptcy business
11 relationship with the Debtor. The holder of the assumed
12 liabilities is a very limited list. And I think it is
13 entirely normal and appropriate that a buyer requests that
14 the parties it intends to do business with going forward not
15 be potentially rendered insolvent by a cause of action.

16 The respect to the second concern, regarding the
17 administrative expenses of the estate, the Buyer has agreed
18 to a cash holdback mechanism found in Section 109 of the
19 Asset Purchase Agreement, and addressed in decretal paragraph
20 of the Sale Order. The original sale, to the stalking horse
21 bidder, proposed the sale of the Debtor's cash and cash
22 equivalents. Millstone has agreed to provide for an amount
23 up to \$300,000.00 of the Debtor's cash. And when I say up to,
24 because if there is less than \$300,000.00 of cash on hand, it
25 would be whatever that amount is.

1 So, up to \$300,000.00 of cash shall remain in the
2 Debtors DIV account, subject to an administrative hold, by
3 PNC, for payment of administrative claims. We have built in
4 a procedure whereby requests for payment of those claims be
5 submitted to the Debtor. The Debtor will request Millstone's
6 approval. Within two business days, we will either approve
7 or disapprove, with a reason. If we disapprove payment of
8 the claim, that party is free to avail itself of Section 503
9 and can come to the court and seek payment of the claim. But
10 that money is frozen and available for payment of those
11 claims.

12 Based on my conversations, with PNC, who has been
13 monitoring the historic levels of the DIV account, as well as
14 my conversations with Debtor's counsel, we believe that the
15 \$300,000.00 cushion should be more than sufficient to address
16 all of the trailing administrative expense claims that need
17 to be paid. That amount is not being applied to the ETOH and
18 Agtech claims. Those are separate liabilities being assumed
19 by the Buyer.

20 Additionally, there was concern raised, by the U.S.
21 Trustee, about the bankrupt - legitimate bankruptcy purpose
22 of the sale. Your Honor, through the Asset Purchase
23 Agreement and decretal paragraph 17 of the Sale Order,
24 Millstone and PNC have agree to provide a \$50,000.00 carve
25 out to the estate. I say Millstone and PNC because while

1 Millstone has agree to provide the \$50,000.00 carve out,
2 there is a \$200,000.00 available cash threshold.

3 If the \$200,000.00 available cash threshold is not
4 met, PNC has agree to backstaff that \$50,000.00 carve out.
5 So that regardless of the Debtor's cash situation, \$50,000.00
6 will be made available to unsecured creditors, to be
7 distributed in accordance with the Bankruptcy Code's priority
8 scheme.

9 As evidence by the objection filed by the TTB, there
10 is a limited universe of buyers to whom the assets can
11 legally be transferred, given the nature of the business and
12 the nature of the assets. And the value of the business
13 decreases precipitously if it is sold in a liquidation. We
14 believe the current sale does provide the best outcome for
15 the estate, because absent a sale, the only alternative would
16 be conversion of the case. And a presale closing conversion
17 is problematic, for numerous reasons, and not in anyone's
18 interests, and is likely to result in an estate where no
19 money is available for unsecured creditors. PNC receives far
20 less than it is getting under the sale. And significant
21 value is lost.

22 Your Honor, with those explanations and changes to
23 the Asset Purchase Agreement and Sale Order, it is our belief
24 that we have addressed all of the concerns raised by the
25 United States Trustee.

1 THE COURT: Mr. Callahan?

2 MR. BURNETT: And Your Honor, if I might, I just
3 wanted to chime in and say I agree with all of the comments
4 that Ms. Jefferson made, especially as it relates to the -
5 the Debtor's position vis a vis the U.S. Trustee and the
6 bankruptcy purpose of the sale. I do concur that she
7 accurately stated also MMD's position on that issue.

8 THE COURT: Mr. Callahan?

9 MR. CALLAHAN: Yes, Judge. Kevin Callahan, on behalf
10 of the United States Trustee. Ms. Jefferson has adequately
11 summarized the concerns of the United States Trustee in our
12 objection. Maybe I need to go back a little bit, with the
13 history of this case. And of course, Your Honor was aware
14 that upon filing the petition, the Debtor filed a motion
15 seeking approval of bidding procedures and attached an
16 Agreement of Sale.

17 THE COURT: Mister - I'm going to have to put you on
18 hold.

19 [PAUSE IN PROCEEDINGS]

20 THE COURT: I'm sorry. Okay. So, Mr. Callahan, you
21 were saying that the U.S. Trustee, you believe that its
22 objection had been adequately summarized by Ms. Jefferson,
23 correct?

24 MR. CALLAHAN: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. CALLAHAN: So, I was - I was referring to when
2 the case was filed there was a motion filed to approve
3 bidding procedures and there was a stalking horse identified
4 as ETOH, Mr. Hamermesh's client. The relevant provision,
5 from my perspective, at the time, was that it proposed to pay
6 trade creditors in full, suggesting that the unsecureds would
7 be paid. PNC ultimately, or eventually objected to that APA,
8 and the Agreement was revised, and that revision indicated
9 that unsecured creditors would not be treated, at least in
10 terms of the Purchase Agreement.

11 So, up until the - the auction, the only information
12 new had was with respect to the Agreement that was presently
13 on the table. On the day of the auction, I was - I spoke to
14 counsel for PNC who informed me of some of the terms of the
15 Agreement which - which referenced a potential payout of
16 fifty - or a potential fund, carve out, if you will, of
17 \$50,000.00 for unsecured creditors.

18 We filed the objection, Your Honor, not only on that
19 basis, but in our view there was no articulated exit strategy,
20 by the Debtor, with respect to what it would do once the sale
21 was approved, and the sale closed. There did not appear to
22 be any legitimate bankruptcy purpose. That is to say there
23 was no plan accompanying the motion, and no indication, at
24 least formal indication, from the Debtor, of what it intended
25 to do after the sale was completed.

1 With the objection, I also filed a motion to convert
2 or dismiss the case, citing some of the same reasons and
3 concerns we had with the sale objection, as well as informing
4 the Court that the Debtor was delinquent with respect to
5 filing financial information. That as we understood it,
6 officers were being paid, despite not having filed notice of
7 their compensation. And that again, did not seem that the
8 Debtor would be there after once the sale is completed. So,
9 there is a hearing scheduled next week on this.

10 THE COURT: Right.

11 MR. CALLAHAN: That wasn't coincidental. We wanted to
12 see how this hearing would proceed. And after the sale -
13 after the - after the auction, we had extensive discussions,
14 with Ms. Jefferson, who represents the potential Buyer, as
15 well as Ms. Maleski and some conversations with counsel for
16 the Debtor. It has been suggested, although it has not been
17 formally recognized, that conversion of the case to a Chapter
18 7 may be the appropriate, if you will exit strategy.

19 The revised, or I guess it is the second revised, or
20 the third agreement that - the first agreement, I should say,
21 between Millstone and the Debtor does have a provision that
22 offers a carve out for - potential carve out for unsecured
23 creditors in the amount of \$50,000.00. And PNC, Ms.
24 Maleski's client, has agreed to set up some framework to
25 protect that money, if the sale was approved, and if for

1 example the Debtor or the Debtor's principles were no longer
2 seeking to operate the entity, or were - or there was an
3 entity to operate.

4 So, they have met, I suppose, most of our objections.
5 The revised or the agreement has - was filed, I think,
6 yesterday. That is the Agreement that they are asking Your
7 Honor to approve. And under Third Circuit law, you have to
8 make the findings, with respect to whether there is a good
9 faith, and the other, of course, factors important in this.
10 So, regardless of my objection, I am simply asking you to
11 decide based upon what they are offering today, and of course,
12 the Revised Agreement of Sale that has been filed, whether
13 this sale meets the appropriate criteria under the Third
14 Circuit standards.

15 I understand that the proposed closing date is now
16 September 30th. I presume we will have further discussions
17 whether the U.S. Trustee will go forward next week, or wait
18 until after closing. But I think it is also appropriate,
19 when we come back to Mr. Burnett, for him to at least give us
20 a coming attraction of what the Debtor's intentions would be
21 if this Court were to approve the sale.

22 MR. BURNETT: Your Honor, what I wanted to do is, I
23 think what is relevant to Mr. Callahan's -

24 THE COURT: -- Hold on again, counsel.

25 MR. BURNETT: I'm sorry.

1 THE COURT: Mr. Burnett, before you start with the,
2 as Mr. Callahan said, coming attractions, I am going to need
3 a 10 minute break. Can we come back at, it is 20 of right
4 now, I think. Hold on. It is 20 of. Can we come back at
5 three, I mean 2:50?

6 MR. HAMERMESH: Your Honor, this Mr. Hamermesh. I
7 was just going to ask, my client, - my client's issues have
8 been addressed. Could I be excused please, because I have
9 another hearing that is starting up shortly.

10 THE COURT: Yes, I mean if you feel that they have
11 addressed, and you have withdrawn your objection, and you are
12 satisfied with the Order, yes, you may be excused.

13 MR. HAMERMESH: Thank you, Your Honor.

14 THE COURT: Anybody else?

15 MR. GERSHMAN: Yes, Your Honor. Howard Gershman,
16 our objection has been addressed and withdrawn, and I would
17 also ask permission to be excused from --.

18 THE COURT: Unless I hear some objection, I don't
19 know why, you may be excused too, Mr. Gershman.

20 MR. GERSHMAN: Thank you, Your Honor.

21 THE COURT: Anybody else?

22 MR. ST. JOSEPH: Yes, Your Honor, I guess that just
23 goes for the objections. TTB has also withdrawn their
24 objection.

25 THE COURT: Okay. So, Mr. Joseph, if you want to be

1 excused, you may be excused also. I think you said that you
2 were satisfied, both Mr. - Mr. Hamermesh and Mr. Gershman
3 said that they were satisfied with the Order, so that's fine.

4 MR. ST. JOSEPH: Yes, thank you, Your Honor.

5 THE COURT: All right. Anybody else? I'll be right
6 back. Thank you for your indulgence, counsel.

7 MR. BURNETT: Thank you, Your Honor.

8 [BREAK]

9 THE COURT: Counsel?

10 MR. BURNETT: Yes, Your Honor.

11 THE COURT: All right. I think, Mr. Burnett, you
12 were going to, I guess what Mr. Callahan had described as a
13 coming attraction. So, you're up.

14 MR. BURNETT: Well, so, Your Honor, I would like to
15 respond in a couple ways, to what Mr. Callahan to say, well,
16 and I would certainly like to get the proffers of Mr. Parzych
17 and Mr. Comly, as they will give context and allow you to
18 make findings on the sale hearing.

19 As to the coming attractions issue, obviously, the
20 U.S. Trustee has a pending motion, which is - which, you know,
21 we are going to file a response to. And frankly, we have
22 been really concentrating on consummating the sale, for the
23 benefit of the estate and its creditors, as outlined
24 previously in this hearing.

25 You know, we don't know at this time, what we are

1 going to do. We haven't made a decision. We are not, you
2 know, trying to, you know, do anything other than to proceed
3 to do this sale and to evaluate the what is in the best
4 interest of the estate and its creditors, subsequent to
5 closing. But of course, you know, the U.S. Trustee's
6 objection, excuse me, motion is pending. You know, we have a
7 hearing set up for that. And we will certainly consult with
8 the U.S. Trustee's Office and all parties in interest as it
9 is appropriate as to what the next steps are.

10 I can't say anything better than that, because that
11 is really the exact state of the knowledge that we are in at
12 this time. This is just a 363 sale hearing. So, I think it
13 might be best, Your Honor, if we could wrap it in context so
14 that you have the benefit of the proffers that allows you to
15 kind of get a sense of, you know, what was done in the sale
16 hearing process, and the like. And then it may allow you to
17 give a, you know, more complete view.

18 THE COURT: Okay.

19 MR. BURNETT: Is that okay? May I proceed with the
20 proffers?

21 THE COURT: Yes, I am sorry, counsel. Yes, if you
22 are going to make a proffer that you believe would satisfy
23 the various elements that I need to find exist in order to
24 approve the sale, correct?

25 MR. BURNETT: Yes, Your Honor.

1 THE COURT: All right. And you are going to proffer
2 the testimony of Mr. Parzych, and you said also Mr. Comly,
3 correct?

4 MR. BURNETT: That is correct, Your Honor.

5 THE COURT: All right. You may proceed.

6 MR. BURNETT: Thank you, Your Honor. Let me just
7 note also that we have filed an exhibit list, consistent with
8 the Court's Order on zoom hearings, that was served on
9 chambers and parties in interest, and so, we will be
10 referencing those - there is five exhibits there, and I will
11 be referencing them very briefly, in-

12 THE COURT: -- Okay.

13 MR. BURNETT: -- in the proffer. So, I'll - I'll
14 first start with the proffer of Mr. Parzych. If Mr. Parzych
15 was called to testify, he would testify as following, that he
16 is a member and sole officer of Midnight Madness, in a
17 limited liability organized under the laws of the
18 Commonwealth of Pennsylvania, and the Debtor in this case.

19 MR. CALLAHAN: Excuse me, Judge.

20 THE COURT: Which Parzych?

21 MR. CALLAHAN: I'm sorry, Mr. Barnett - Burnett, is
22 Mr. Parzych here? Is he present?

23 MR. BURNETT: Oh, Your Honor, thank you Mr. Callahan,
24 I apologize. He was on video. I think he has called in,
25 because he had trouble with his video connection. And I

1 think he is that 267 number on the bottom. So, he is here,
2 and Mr. Parzych could you verify that you are here?

3 MR. CASEY PARZYCH: I am here.

4 THE COURT: And which Mr. Parzych is this?

5 MR. PARZYCH: Casey Parzych.

6 THE COURT: All right. Okay.

7 MR. BURNETT: Thank you, Your Honor. I apologize for
8 that. So, as such, Casey Parzych oversees all aspects of the
9 business of MMD. Mr. Parzych has been a member and officer
10 of MMD since its inception in May of 2012, and he is
11 generally familiar with the Debtor's day to day operations,
12 business and financial affairs and books and records.

13 On the petition date of June 21st, 2021, MMD filed a
14 voluntary petition for a Chapter 11 under the Bankruptcy Code.
15 MMD operates a distillery and packing plant in Bucks County,
16 Pennsylvania. It employs approximately 80 individuals on a
17 full and part time basis. As of the petition date, MMD was
18 in default of its primary lender, PNC, and its business
19 operations were losing money. Without an outside investment,
20 Mr. Parzych believed that MMD would be unable to pay debt
21 service and to continue operations.

22 ETOH, at that time, had expressed interest in
23 purchasing the assets of MMD. It was Mr. Parzych's view that
24 MMD could not survive without ETOH, or another purchaser,
25 buying its assets. And that is absent a consummation of a

1 sale, MMD would likely be liquidating, leaving the Debtor's
2 secured lenders with far less than their portion of the
3 purchase price, trade creditors with nothing, and
4 approximately 80 employees out of jobs, in a small town.

5 At that time then MMD proceeded with a stalking horse
6 bid to ETOH. The ETOH asset purchase agreement, the original
7 stalking horse, as revised, and as referenced by Mr. Callahan,
8 the - the last iteration of the ETOH Asset Purchase Agreement,
9 generally provided for a purchase price of 1.025 dollars in
10 cash - excuse me, 1.025 million in cash, plus the assumption
11 of certain secured debt, for all or substantially all of the
12 Debtor's assets free and clear of liens. The assumption and
13 cure of substantially all leases and contracts needed for the
14 Debtor's business operations. And specifically the
15 assumption of secured debt such as the first mortgage. And
16 the opportunity for continue employment of substantially of
17 the Debtor's employees.

18 So, the stalking horse bid, of ETOH, was marked by
19 Comly. MMD worked extensively with Comly to assist Comly in
20 its marketing efforts, setting up the data room,
21 supplementing it with information, as requested by various
22 bidders and PNC and facilitated tours with Comly, etcetera.
23 As a result, of the efforts of Comly, the Parzych would
24 testify that the Debtor and his professional - and with the -
25 in consultation with the Debtor and his professionals, two

1 new bids were received prior to the deadline - Millstone
2 Spirits, LLC, and Bankshares Realty, LLC, which is
3 essentially a successor by assignment of PNC. It was a
4 credit bid by Bankshares.

5 The auction took place via zoom, on August 25th,
6 where the three bidders were in attendance: Millstone, PNC,
7 and a stalking horse bidder, ETOH. And it was conducted, the
8 - the - the zoom auction was conducted by MMD's counsel, Mr.
9 Burnett, and Mr. Giacometti. Mr. Parzych would further
10 testify that his counsel filed and served a Notice of Sale,
11 which is Exhibit 3 on the exhibit list, Docket Number 133.

12 THE COURT: Hold on. All right. Pull that up for me,
13 John.

14 JOHN: I'm sorry, Mr. Burnett, what was it labeled as
15 again?

16 MR. BURNETT: It is the Notice of Sale. Revised
17 Notice of Sale.

18 THE COURT: And that is Exhibit what?

19 MR. BURNETT: Three. I am sorry this is out of order,
20 Your Honor, but it is Exhibit 3.

21 THE COURT: That's fine.

22 MR. BURNETT: So, that basically just says we were
23 giving folks notice of the dates. So, I don't need it any
24 further than that.

25 So, Mr. Parzych would testify that MMD's counsel

1 served that notice, and that Mr. Parzych was in attendance at
2 all times at the zoom auction. Mr. Parzych would testify
3 that after negotiations, at the auction, during the auction,
4 all bids were normalized and deemed to be capital Q Qualified
5 Bids, and were able to be matched fairly on an apples to
6 apples basis, as competing bids, for MMD's assets, in
7 accordance with the bid procedures order.

8 Mr. Parzych would testify that in his view the
9 auction that took place was spirited and conducted in good
10 faith by all parties, including the winning bidder, and was
11 conducted in accordance with the Bidding Procedures Order
12 approved by this Court. In Mr. Parzych's view, the process
13 yielded the successful winning bid from Millstone, in the
14 amount of 1.4 million dollars, plus other consideration,
15 including assumption of cure costs and certain administrative
16 liabilities, per the terms of the administrative - excuse me,
17 of the Asset Purchase Agreement filed with this Court. And
18 that is Exhibit 1, docket number 172, and also the black line
19 to the stalking horse bid, which is Exhibit 2, docket number
20 173.

21 Although those could be pulled up, I don't really
22 have much to say about them, other than we filed them of
23 record, and they - the Exhibit 2, which is up now, and -
24 right Exhibit 2 is the stalking horse bid comparison. So,
25 the full bid and the final APA comparison between the

1 stalking horse and the AAPA, which is being submitted to Your
2 Honor, for approval today.

3 And Exhibit 1, which is docket 172, but the - 172-1,
4 which is the exhibit to that Order, if you will. And that is
5 the claim of the APA. Yes, there it is, yes. Oh, right. So,
6 those - that is the reference to those two exhibits. And -
7 and this item - yes, thank you.

8 Mr. Parzych would further testify that he has
9 reviewed the Millstone Asset Purchase Agreement, as revised,
10 and as filed with this Court this morning, and believes that
11 it represents the highest and best offer for the assets. Mr.
12 Parzych would testify that he has considered the impact of
13 the potential sale on the post-petition operations of MMD.
14 And based on his review of the business operations, and the
15 cash position, of MMD, as well as the provisions in the
16 Millstone Asset Purchase Agreement and the Sale Order, Mr.
17 Parzych believes that there will be sufficient funds to pay
18 all current and trailing administrative expenses of MMD,
19 incurred from the petition date through to the closing of the
20 sale.

21 And in general conclusion, Mr. Parzych believes that
22 the Asset Purchase Agreement, from Millstone, is fair and
23 reasonable under the circumstances overall. Mr. Parzych
24 would testify that he believes that the sales transaction is
25 the highest and best offer that can be obtained for the

1 assets here. Mr. Parzych believes that the consummation of
2 the transaction with Millstone is in the best interest of the
3 estate, and is a valid exercise of his sound business
4 judgement. Mr. Parzych believes that to his knowledge - and
5 believes that there is no collusion between Millstone and any
6 other potential bidder. Mr. Parzych would testify that the
7 negotiations with his professionals and the purchaser, were
8 at all times conducted in good faith and at arm's length, and
9 that the purchaser is a good faith purchaser with respect to
10 the transaction contemplated by the sale - through the sale
11 documents. Mr. Parzych would lastly testify that he believes
12 that based on his experience, and upon reliance of advice
13 from his professionals, that the entry of the proposed order
14 approving the transaction and authorization of the Asset
15 Purchase Agreement, with Millstone, is justified and should
16 be approved.

17 And that would be the conclusion of the proffer of Mr
18 Casey. I don't know if you would like me to break here and-

19 THE COURT: -- Yes.

20 MR. BURNETT: -- Or if you just want me to proceed
21 with Mr. Comly.

22 THE COURT: No, break here. Does anyone wish to - to
23 cross examine, Mr. Parzych, based on the proffer that was
24 made by Mr. Burnett?

25 MR. CALLAHAN: Judge, Kevin Callahan, from the U.S.

1 Trustee. I have a few questions for Mr. Parzych.

2 THE COURT: Okay. Wait, we have to swear him in.

3 THE COURT DEPUTY: Mr. Parzych, do you swear that the
4 testimony you are about to give to the Court will be the
5 truth, the whole truth, and nothing but the truth?

6 MR. PARZYCH: I do.

7 THE COURT DEPUTY: Could you please state and spell
8 your name for the record.

9 MR. PARZYCH: Casey Parzych, C-A-S-E-Y P-A-R-Z-Y-C-H.

10 THE COURT DEPUTY: And I just need you to please
11 state your address for the record.

12 MR. PARZYCH: 138 North Main Street, Trumbauersville,
13 PA.

14 THE COURT: What - what town or city was that?

15 MR. PARZYCH: Trumbauersville.

16 THE COURT: Could you spell that, I'm not - I'm not
17 understanding you.

18 MR. PARZYCH: T-R-U-M-B-A-U-E-R-S-V-I-L-L-E.

19 THE COURT DEPUTY: Trumbauersville.

20 THE COURT: Trumbauersville, okay. Okay. You can
21 proceed. Wait, did you swear him in? I'm sorry, I - did you
22 say -

23 THE COURT DEPUTY: -- Yes, we did, Judge.

24 THE COURT: All right.

25 THE COURT DEPUTY: Thank you, Mr. Parzych.

1 THE COURT: I'm sorry.

2 MR. CALLAHAN: Mr. Parzych could you please state
3 your relationship with Midnight Madness Distillery?

4 MR. PARZYCH: I am the president, currently, and sole
5 officer.

6 MR. CALLAHAN: And Mr. Burnett just made what is
7 called a proffer, to the Court. Were you present during that
8 proffer, at least over the phone?

9 MR. PARZYCH: Yes.

10 MR. CALLAHAN: And do you agree with the information
11 that he presented to the Court?

12 MR. PARZYCH: I do.

13 MR. CALLAHAN: And if this - if this agreement is
14 approved by the Court, do you have any personal agreements
15 with Millstone, or anyone acting on their behalf?

16 MR. PARZYCH: I do not.

17 MR. CALLAHAN: Do any of your family members have any
18 agreements with Millstone or anyone on Millstone's behalf?

19 MR. PARZYCH: None that I am aware of, no.

20 MR. CALLAHAN: Okay. And if this agree - if this
21 sale is approved, what - what is your intentions for
22 employment?

23 MR. PARZYCH: I will be looking for employment.

24 MR. CALLAHAN: Has anyone made any offers of
25 employment to you?

1 MR. PARZYCH: No.

2 MR. CALLAHAN: Okay. And if the Court approves this
3 agreement, what do you see your role as over the next several
4 weeks, at least through September 30th, with the company?

5 MR. PARZYCH: Basically maintaining it to be
6 delivered to Millstone.

7 MR. CALLAHAN: And is it your intent to comply with
8 all the - with the cash collateral agreement that has been
9 reached with PNC?

10 MR. PARZYCH: It is.

11 MR. CALLAHAN: Okay. Your Honor, thank you. I, and
12 thank you, Mr. Parzych. I have no further questions.

13 THE COURT: Anyone else have any questions for Mr.
14 Parzych? Any follow up, Mr. Burnett, based on the questions
15 that were raised by Mr. Callahan?

16 MR. BURNETT: I do not, and I appreciate the
17 questions raised by Mr. Callahan.

18 THE COURT: Okay. All right.

19 MR. BURNETT: So, if - with Your Honor's permission,
20 if I may proceed to the testimony of Mr. Jim Comly.

21 THE COURT: Okay.

22 MR. BURNETT: Your Honor, to proffer the testimony of
23 Jim Comly, if called to testify, Mr. Comly would testify that
24 he is the Vice President of William F. Comly and Son, Inc.
25 William F. Comly and - he would testify that William F. Comly

1 and Son, Inc. is one of the oldest auction companies in the
2 United States, founded in 1934. And that Comly was - has
3 flourished to become a leading regional, industrial auction
4 firm serving the needs of manufacturing companies, industrial
5 plants, secured lenders, lawyers, bankruptcy courts, and
6 owners, for seven generations.

7 Mr. Comly would testify that he has extensive
8 experience in brokering and marketing distressed assets for
9 over 15 years, in the region, and elsewhere, and also before
10 this Court for Chapter 11 cases, as well as Chapter 7 cases.
11 Mr. Comly would testify that he is familiar with the Chapter
12 11, 363 sales process, and with the procedures.

13 In terms of MMD, Mr. Comly would testify that Comly,
14 William F. Comly and Son has been retained, by this Court, to
15 be the broker and marketer, sales agent for the proposed sale.
16 And that Comly was hired, by the Debtor, due to Comly's
17 extensive experience in the - with similar sales in the
18 industry, geographic area, and will assist MMD in realizing
19 the highest and best prices - price for the assets.

20 Comly, and Mr. Comly specifically, prepared and
21 implemented a marketing program to promote the sale of the
22 assets. And as reference to that there is Exhibit 5, which
23 is the Comly exhibit of the marketing material, which is
24 essentially a list of Mr. Comly's expense - or excuse me,
25 Comly's expenses, as well as a copy of the ad and the

1 brochure. The prices are not relevant. What is relevant is
2 the different activity and the nice little glossy picture
3 there, with the assets. Thank you for that, Exhibit 5.
4 Exhibit 5 is representative of what Mr. Comly, excuse me,
5 what Comly has done.

6 So, in terms of the compensation structure, which is
7 relevant in connection with Comly's actions here, subject to
8 further order of the Court, Comly will be compensated as
9 follows. They receive \$6,500.00 for a marketing fee and
10 labor and travel expenses for \$2,500.00. But most
11 importantly, although - although Mr. Comly would testify that
12 although Comly is paid a flat fee to market the assets, Comly
13 is incentivized here to find a new bidder. If another party
14 submitted an offer that is higher and better, and acceptable
15 to the Debtor, and this Court, Comly would be entitled to
16 receive a ten percent (10%) commission of the difference
17 between the initial stalking horse bid and the final
18 successful bid. This is relevant just to show - we are not
19 here to hear Mr. Comly's commission today, but it is relevant
20 to show the incentive - the incentive that Comly was given to
21 market.

22 So, pursuant to their engagement, Mr. Comly would
23 testify that their marketing efforts included direct mail
24 solicitation, over 500 colored postcards mailed on July the
25 15th, to an acquired mailing list comprising of distilleries,

1 alcohol distributors, bar restaurant owners, business brokers,
2 and liquor license attorneys in Philadelphia, Pennsylvania,
3 and surrounding areas, as well as members of various food and
4 beverage associations. Comly also did advertisement placed
5 in regional newspapers, *Philadelphia Enquirer*, *Daily News*,
6 *Lancaster Farming* and internet direct mail postcard and
7 details were placed on the website, along with photographs of
8 the assets being offered for sale.

9 Mr. Comly would testify that in addition, they placed
10 advertisements of the sale on the business and restaurant
11 trade websites, included websites Biz Buy Sell, BizQuest,
12 Businesses for Sale, Restaurant for Sale, as well as auction
13 websites, Comly.com and AuctionZip, as well as various
14 association websites, social media sites, Craigs List,
15 Facebook, Google, Business LinkedIn, and Twitter. And also
16 email blast professional prepared electronic sale notice was
17 sent to Comly's extensive inhouse mailing list of over 18,920
18 opt in subscribers, as well as bidders in prevable [sic]
19 comparable - previous comparable auction sales of opt in
20 subscribers under various categories such as business brokers,
21 attorneys, bar and restaurant owners, distilleries, and
22 alcohol distributors.

23 Mr. Comly would testify that through all of that
24 marketing efforts it generated the following types of
25 interest. They received 25 interested parties that contacted

1 Comly, 14 returned signed NDAs, including PNC. Seventeen
2 different people were granted access to the data room. Four
3 tours and inspections were - were conducted onsite. Comly
4 would testify that he and Comly fielded bidder questions all
5 throughout the process.

6 Mr. Comly would testify that as a result of the
7 efforts of Comly, and MMD, and MMD's professionals, that two
8 new bids were received prior to the deadline - Millstone
9 Spirits Group, LLC, as well as Bankshares Realty, LLC, which
10 is PNC, which was a credit bid.

11 Mr. Comly would testify that the auction took place
12 on August 25th, 2021, via zoom, with the three bidders:
13 Millstone, PNC, and the stalking horse bidder. And that it
14 was conducted by counsel to MMD. Mr. Comly would testify
15 that he was in attendance at all times during the - during
16 the zoom auction. Mr. Comly would testify that, after
17 negotiations at the auction, all bids were normalized and
18 deemed to be qualified bids, and able to be matched fairly,
19 on an apples to apples basis, as competing bids for MMD's
20 assets, in accordance with the Bid Procedures Order.

21 Mr. Comly would testify that in his view, the auction
22 that took place was spirited and conducted in good faith, by
23 all parties, including the winning bidder, and was conducted
24 in accordance with the Bid Procedures Order approved by this
25 Court. Mr. Comly would testify that the process that yielded

1 the successful winning bid, from Millstone, in the amount of
2 \$1.4 million plus other consideration, per the terms of the
3 Asset Purchase Agreement, files with this Court, is the
4 highest and best offer at the auction.

5 And Mr. Comly would testify that based on his years
6 of experience in the industry, that he believes that Comly's
7 efforts marketing the assets were reasonable and appropriate
8 for a transaction of this size in this industry. Mr. Comly
9 would testify that, at all times, his interactions with the
10 bidders were in good faith, at arm's length, and conducted
11 for the purpose of maximizing the sale of the assets being
12 sold here.

13 Lastly, Mr. Comly would testify that based on his
14 years of experience in the industry, that he believes that
15 Comly's work marketing these assets helped yield the highest
16 and best offer that could be obtained for these assets under
17 the circumstances. And that is the conclusion of this
18 proffer.

19 THE COURT: Any cross examination of Mr. Comly? Mr.
20 Callahan? Anyone?

21 MR. CALLAHAN: Judge, I have no questions for this
22 gentleman.

23 THE COURT: Okay. Anything else, counsel?

24 MR. BURNETT: Your Honor, certainly subject to any
25 questions Your Honor may have, that concludes the Debtor's

1 presentation.

2 THE COURT: And I - just a quick look. So, the
3 Debtor is selling this real estate, equipment, and the entire
4 business, correct?

5 MR. BURNETT: Basically, yes, Your Honor. Obviously,
6 the - the purchased assets are specifically listed, but
7 essentially that is correct.

8 THE COURT: Right, I just looked at the flyer and it
9 just says - on one of the exhibits that you had, there was a
10 quick - I looked at it and it said real estate, distillery,
11 and something else. And it was like a quick look at it.

12 MR. BURNETT: Yes, that is correct, Your Honor. Yes.

13 THE COURT: So, - so, they were selling it as a going
14 concern, correct?

15 MR. BURNETT: That is correct.

16 THE COURT: Okay. Okay. anything else that you
17 would like to submit - well, you made the proffer. The
18 proffer of Mr. Comly was accepted. No one did any - any
19 additional questions. Are there any exhibits that you would
20 like to introduce into evidence in support of the sale?

21 MR. BURNETT: I would like to move exhibits 1 through
22 5 into evidence.

23 THE COURT: Did we talk about all of them?

24 MR. BURNETT: We did, Your Honor. We did touch upon
25 them. They - they - essentially, they are, the first four

1 are all filed documents on the docket. And the last one is
2 Comly's marketing materials.

3 THE COURT: Any objection to the admission of Exhibit
4 1 through 5? Okay. Hearing no objections, which is Exhibit
5 1 - whoop, back up John. Exhibit 1 which is the Asset
6 Purchase Agreement between Midnight and Millstone. The clean
7 version is being submitted. I don't think we need to admit
8 the red ones, just on the docket. Number 3 was the Bid
9 Procedures Order that was entered by the Court on docket
10 number 110. That is admitted. The Revised Notice of Sale of
11 Assets, docket number 133, that is admitted. And number 5,
12 the Comly Auctioneer Marketing Materials are admitted.

13 Anything else Mr. Burnett?

14 MR. BURNETT: No, Your Honor. Nothing else.

15 THE COURT: Okay. So, are you going to give once -
16 we have made a record. You have offered in evidence. Any
17 conclusion as to how this sale should - why this sale should
18 be approved in that it satisfies the standard for approval of
19 a sale under 363, a summary of why it meets the - the
20 adequate notice requirement, good faith, sound business
judgement, fair and reasonable price? Conclusion counsel?
22 Why you think I should approve all of that?

23 MR. BURNETT: You said it better than I could, Your
24 Honor, but for all of those reasons, I am happy to articulate
them, but the - the sale was, in fact, conducted in good

1 faith and at arm's length. It was the product of, you know,
2 spirited negotiation that yielded the highest and best offer
3 through a fully marketed process. Under the circumstances,
4 it seems uncontested, from an evidentiary standpoint, that it
5 is in the best interest of the estate and its creditors to
6 have this sale be consummated, based on the terms as
7 articulated previously on the record. For those reasons, we
8 respectfully request that Your Honor enter the Order and
9 authorized us to enter into the Asset Purchase Agreement and
10 consummate the closing of the sale.

11 THE COURT: Okay. Anyone else - any comments before
12 the Court issues its findings? Okay. In connection with the
13 standard that the Debtors have to establish in order for the
14 Court to approve the sale under 363, the first thing that the
15 Court must find that there was adequate notice. I think
16 Exhibit 4 was the Notice of Revised Hearing of Sale. The
17 Debtor has provided adequate notice. The sale was the result
18 of good faith negotiations, as evidenced by the auction, and
19 the proffered testimony of Mr. Parzych and Mr. Comly, who
20 both participated in the negotiation and the sale, plus the
21 auction.

22 That the sale is supported by evidence of a sound
23 business justification, namely Mr. Parzych, his proffered
24 testimony is that if a sale did not occur, that given the
25 financial condition of the business, that it would result in

1 a liquidation, because they apparently had insufficient
2 assets to continue as a going concern.

3 The next is that the purchaser will pay a fair and
4 reasonable price. I think that the - I find that the price
5 is fair and reasonable. It was a result of negotiations and
6 at an auction. The Debtor originally had a stalking horse
7 agreement for \$1.04 million plus some other - some other
8 assumed liabilities. The successful bidder is paying
9 approximately \$1.4 plus some other additional amounts.

10 I also find that the - that the sale is in the best -
11 is a proper exercise of good business judgement. I also find
12 that there was no collusion between the bidders, and that
13 the proposed purchaser, Millstone, is a good faith purchaser.
14 Based on all of those findings, I will issue an Order
15 approving the sale of the Debtor's business to Millstone.
16 And with that said, counsel, I think we need to take a look
17 at the proposed Order.

18 MR. BURNETT: Thank you very much, Your Honor. Yes,
19 the proposed Order was filed this morning. And it was also,
20 I should note that, as Ms. Jefferson noted, that this was the
21 product of discussion among the parties and is a -
22 essentially a resolution of a lot of the issues here, and was
23 reviewed, substantially, by all the parties in interest. So,
24 it reflects both a resolution of some of the objections, as
25 well as dovetails in with the revised APA. So,--

1 THE COURT: -- Yes. So, so, all of the objections
2 having been withdrawn, there was really nothing the Court
3 could consider, in terms of resolving any objections.

4 THE COURT: Correct.

5 THE COURT: So, I guess I should state that on the
6 record, which is why I didn't address them, because they are
7 all withdrawn. There is really nothing for me to address,
8 with respect to objections.

9 MR. BURNETT: Correct. I guess I wanted to say, Your
10 Honor, that the Order incorporates the resolutions that
11 resolve those objections, but yes.

12 THE COURT: Okay. All right. Let's pull that up.
13 All right. Is there anything specific that you think - I
14 mean the first couple of pages are background. Let's get to
15 - John, let's scroll through this. I think we probably -
16 well, okay. Move that on down farther.

17 MR. BURNETT: -- And if I - if I might, I may also
18 invite Ms. Jefferson to unmute and - and speak in too,
19 because she did such a laboring war on the Order as well.
20 We-

21 THE COURT: -- Right. Right. No, the - John, go
22 back up. Go back up, because the first thing it says is that
23 the Court has jurisdiction on a statutory basis. We know
24 that. Go down. I think the D, Due Proper Timely Adequate
25 and Sufficient Notice and a Reasonable Opportunity has been

1 provided, which the Court has found. Because adequate notice
2 is when you provide a reference to the sale, a description of
3 the assets, the terms and condition of the proposed sale, the
4 means by which a party could obtain a copy of it, and the
5 time and place of the hearing on the sale motion, the
6 deadline for objecting to sales, all of that was provided.
7 And I think it referenced that - that those paragraph E sets
8 forth and satisfied the adequate notice provision.

9 And then we are at F. It says that based on the -
10 the evidence adduced at the hearing, Debtor determined that
11 the Asset Purchase Agreement, which you are going to fill in
12 the docket number, represents the highest and best offer.
13 [Inaudible] pay. A non-collusive, duly notice, I have
14 already found that. And that all of the sale procedures have
15 been complied with in all materials respects.

16 Next, let's see what G says. Shall have the
17 authority to consummate, includes sufficient and sound
18 business justification, which I have already described as
19 being able to - to avoid the business being liquidated and
20 being able to be sold as a going concern, plus there would be
21 sufficient funds to pay PNC, I think is the [inaudible]
22 creditors, and there is sufficient money being carved out for
23 unsecured creditors. Was negotiated and that is a good faith
24 negotiations. I have made that finding, based on the - the
25 record that was made. The Buyer is not an insider. Although

1 I'm not really sure that you said that. I don't know, I
2 think the focus of Mr. Callahan's questions was what was the
3 Debtor's principle's post-sale relationship with the - with
4 the Buyer. I don't really think there was any specific
5 information regarding Millstone, the owners of Millstone.
6 But there wasn't anything in the record that would suggest
7 that they were anything other than a disinterested party in
8 this instance and not an insider, based on the proffer that
9 the interest from Millstone was the result of the marketing
10 efforts of Comly. And that, so based on that, I find that -
11 that they are a good faith purchaser, and I have to find that
12 they are not an insider as defined in Section 1v1. Okay.

13 MR. BURNETT: Your Honor, if I could just supplement.
14 I mean they - they are a competitor, and they - they aren't
15 an insider. I can testify to that. And I could have Mr.
16 Parzych's testify to that, but they are not an insider.

17 THE COURT: Right, I - well, I think I am satisfied,
18 based on the fact that they, my understanding is they came to
19 this deal through the efforts of Comly and their marketing.
20 At least I didn't hear anything to the contrary.

21 MR. BURNETT: Correct.

22 THE COURT: And I am basing my conclusion based on
23 that. Yes, we didn't talk about them not being an insider,
24 but there wasn't anything that would suggest that they were.
25 And that their interest was other than as a disinterested

1 party brought in through the marketing efforts. Okay.

2 Then J, I have already found that it was not
3 controlled, it was the result of an auction. Based on the
4 proffered testimony of Mr. Parzych and Mr. Comly, that it was
5 the result of a "spirited auction" where all parties, three
6 bidders were there, and it was the highest and best offer as
7 a result of that, and it wasn't - there isn't any evidence of
8 any collusion. Okay.

9 And then K, I did find that the Buyer is a good faith
10 purchaser, and that the Buyer is acting in good faith within
11 the meaning of Section 363M. I didn't say that specifically,
12 but I did find that it was a good faith purchaser, based on
13 the fact that this was the result of an auction. It was the
14 result of negotiation, and it was - appeared to be the
15 highest and best offer. Okay.

16 Which I think I already kind of jumped into L, which
17 it was a fair and reasonable, and that I have already said,
18 with respect to recovery to the creditors, that absent this
19 sale there would be some recovery to secured creditor, but
20 none for the unsecured creditors. Plus it is in the best
21 interest of the - the Debtor in the sense, that I understand
22 there is 80 employees. So, although it says best interest of
23 creditors, I think sometimes we have to take that into
24 consideration.

25 All right, and the rest is just what happens to the

1 assets. I don't really need to make any findings with
2 respect to that. All those other things, I think with
3 respect to my finding, it was only that it was proper notice,
4 good faith negotiations, sound business justification, and a
5 fair and reasonable price, and that the purchaser is a good
6 faith purchaser. All of which has been set out in the
7 preamble. At least I am assuming these paragraphs are the
8 preamble. Keep going down, John.

9 Okay. And then there is going to be a cure and
10 assumption as set forth in Exhibit B. Are there any other
11 things that have to be added, counsel, other than the docket
12 entry number that we saw at the very beginning?

13 MR. BURNETT: No, Your Honor. I believe that is the
14 only - the only blank, in the - in the document.

15 THE COURT: John, can you just - sale is granted.
16 Had not been withdrawn. I do not have to deny or overrule
17 because they have all been withdrawn, or approved. To
18 address [inaudible] nexus number. I am assuming there is a
19 five. There is probably all sorts of language which you want
20 me to make a finding of. That there is authorized to execute,
21 deliver, and perform [inaudible] Asset Purchase Agreement.
22 John, go down to five. Okay.

23 I don't think there was any substantive or real
24 changes other than dollar, with respect to the original that
25 was filed, and the black line. Is that correct, Mr. Burnett?

1 MR. BURNETT: Regarding?

2 THE COURT: The - this Agreement, the proposed Order.

3 MR. BURNETT: This proposed Order was filed first,
4 just now. So, there wasn't a prior proposed Order. This is
5 our Sale Order that was filed.

6 THE COURT: Oh, okay. You know what, it was the
7 black line Asset Purchase redline as you called it.

8 MR. BURNETT: Correct. Correct.

9 THE COURT: Okay. I thought there was one with the
10 original sale motion, but maybe I - maybe I might have
11 thought I - because often when I get a proposed - a request
12 to approve bidding procedures and process, typically I will
13 see an Order attached. And I thought I did. But I-

14 MR. BURNETT: -- Just the bid procedures. Yes, given
15 the complexity, we did the bid procedures, and this is the
16 Sale Order.

17 THE COURT: All right. Look, John, put it back up
18 and let me make sure, because I thought I saw this.

19 Apparently, I didn't. I thought I - I have seen enough of
20 them that I - I guess I thought I saw one. Because as I said,

21 --

22 MR. BURNETT: -- No, --

23 THE COURT: -- they are often attached, and then I
24 have to make sure I don't sign that when I sign the Bid
25 Procedures Order.

1 MR. BURNETT: Right.

2 THE COURT: Okay. See they did the Purchase
3 Agreement, yes. Uh oh, it kicked you back out, John?

4 THE COURT DEPUTY: Of course.

5 THE COURT: Eileen, was that also sent to you? I
6 think you said you got an Order from Mr. Giacometti. Is that
7 - is that the same thing we are talking about? So, no, we're
8 not - we don't want that. I thought attached to that had
9 been a proposed Order, and it wasn't. So, it is going to be
10 the most latest - it should be one of the later entry on the
11 - on the docket, which is what we are looking at now. So,
12 there wasn't one. [Inaudible] for me to look, because I
13 thought I saw one. But all right, let me just keep going
14 down. I don't - I want to make sure that there is nothing in
15 here that I would not want to be included. All right.

16 Yes, as provided. And the TTB has been whatever it
17 is that you guys have agreed. Then there are some exhibits
18 that have been attached, that reference whatever that
19 agreement is with respect to the excise tax. I know there
20 was a reference to a paragraph. What paragraph was that?

21 MS. JEFFERSON: Your Honor it is to paragraph 5.

22 THE COURT: All right. Did I miss that. Go back up,
23 John.

24 MS. JEFFERSON: If you go back up, it's the - it's
25 the very bottom of page seven that provides that the sale is

1 free and clear of all liens and encumbrances of any kind,
2 other than federal excise tax-

3 THE COURT: -- Which may be attached to inventory
4 concerning the specifically [inaudible]. Okay. And then,
5 there was another reference, I guess, to paragraph five. I
6 just wanted to make sure.

7 There was a reference to Mr. Hamermesh's client. Was
8 that - what paragraph was that?

9 MS. JEFFERSON: Yes, Your Honor. That is - I'm sorry.
10 That - that is specifically in the Asset Purchase Agreement.

11 THE COURT: Okay. I thought it-

12 MS. JEFFERSON: Payment of [inaudible].

13 THE COURT: Right. I know you, at some point, were
14 referencing certain sections of the Asset Purchase Agreement.
15 And then also the paragraphs where, in the Sale Order, that
16 was.

17 MS. JEFFERSON: Yes.

18 THE COURT: Right.

19 MS. JEFFERSON: Your Honor, that's what -

20 THE COURT: -- [Inaudible].

21 MS. JEFFERSON: Yes. That was with respect to the
22 \$300,000.00 cash holdback and the \$50,000.00 carve out.
23 Those are addressed in paragraphs 17 and 18 of the Order.

24 THE COURT: Okay. Let's see that.

25 MS. JEFFERSON: Paragraph 17 addresses PNC's backstop,

1 of the carve out. Carve out is as defined in the Asset
2 Purchase Agreement, and it is prefunded by PNC.

3 THE COURT: Right. And we talked about the pre's so
4 that PNC would not - would not release funds or claims for -
5 without the Debtor's approval. That is that process in - in
6 18?

7 MS. JEFFERSON: That is correct, Your Honor.

8 THE COURT: Okay. Let me see the next one. Well, we
9 kind of skipped around, but offering of the Buyer, subject to
10 the conditions [inaudible] unpaid administrative claims, all
11 of which are defined in the Asset Purchase Agreement.
12 Correct, counsel?

13 MS. JEFFERSON: That is correct.

14 THE COURT: Okay. Next paragraph, John. All right,
15 363f protection, this is the [inaudible]. Okay. Keep going.
16 So, counsel, is there anything other than the standard
17 language that says, you know, what is supposed to happen with
18 this - what the terms - what the effect is, or any other
19 terms, other than just basically saying what the legal
20 consequences are, after the paragraph 24? Because it seems
21 like where do we - John, go down. Because I am assuming
22 there are some exhibits. That's why we are all the way up
23 here. Okay. Same Order. Keep going. Yup. Okay. So,
24 that's the end of the Order. And then there is the Asset
25 Purchase Agreement, of which we have seen the black line and

1 the clean copy, which was Exhibit 2 and 3, I think.

2 MR. BURNETT: Correct, Judge.

3 THE COURT: All right. All right. And then, I think,
4 are there - are there any other exhibits to the Agreement,
5 other than I - there were some references to certain
6 agreements, I mean certain documents. That's the Asset
7 Purchase Agreement. What - there's the schedules that the
8 parties were referring to, because I think, at one point, Ms.
9 Jefferson made a - something was added to 1.03. What was it
10 that was added?

11 MS. JEFFERSON: That is correct, Your Honor. The
12 United States of America, on behalf of the TTB, was added as
13 an assumed liability, at the end of Schedule 1.03.

14 THE COURT: Okay.

15 MS. JEFFERSON: And they are at the very bottom.

16 MR. BURNETT: But it's there. Yes, correct.

17 THE COURT: Counsel, I am going to have to apologize.
18 I have to hold again, once.

19 [PAUSE IN PROCEEDING]

20 THE COURT: All right, counsel, I promise this is the
21 last interruption for today. And so, they were - they were
22 added at 1.03. Okay. And their lien is secured by the
23 inventory. And that is the inventory as of - you negotiated
24 whatever that time period, or is the inventory that is being
25 sold pursuant to the Asset Purchase Agreement?

1 MS. JEFFERSON: Your Honor, it is the inventory that
2 is being sold pursuant to the Asset Purchase Agreement, that
3 would be the inventory that the lien is still attached to.

4 THE COURT: Okay. Because obviously, if there is any
5 other excise, it will be post-sale and from what I understand,
6 the Purchaser also has - is an approved distributor or
7 approved by the TTB.

8 MS. JEFFERSON: That's - that is correct, Your Honor.
9 And I've - I've learned a little about this process
10 throughout the case. But because Millstone is a licensed
11 distiller of distilled spirits, and has a TTB license on file,
12 they are permitted to take - take possession of and title to
13 the distilled spirits under bond, which means that the excise
14 tax will not be payable until we actually sell it to a third
15 party.

16 THE COURT: So, okay. All right. And so, the other
17 paragraphs relates to the mortgage, and the real property,
18 correct?

19 MS. JEFFERSON: Those are the - yes, those are the
20 title exceptions.

21 THE COURT: Okay. Scheduled for disclosure,
22 perpendeed exceptions. Is there anything else? I mean
23 because we didn't talk about that. But that - that's why I
24 asked what was being sold. And then, the exceptions are the
25 liens, the different vehicles, pay care, okay. And what is

1 the next exhibit is - and that related to the - there were
2 none. And the Chapter 5 issue that Mr. Callahan raised,
3 related to claims against the purchaser or their affiliates,
4 correct?

5 MS. JEFFERSON: That is correct, Your Honor. And
6 that is Section 101k of the Asset Purchase Agreement, and
7 decretal paragraph 10 of the Order, that makes very clear
8 that the only Chapter 5 causes of action being sold to the
9 Buyer relate to those claims that would be against the Buyer,
10 its affiliates, and the holders of assumed liabilities. So,
11 a very limited universe of parties.

12 THE COURT: Are there any other Chapter 5 claims?
13 Because I think Mr. Callahan was satisfied there aren't any
14 claims under 547, 548, are any of those things? And if they
15 are, they are not being sold, if they are, correct?

16 MS. JEFFERSON: Correct. There - there may be some.
17 They will remain with the estate.

18 THE COURT: Okay. Okay.

19 MR. BURNETT: Correct.

20 THE COURT: And those are the only agreements. And
21 they have agreed, I think something about they are going to
22 retain, to an extent, I guess, I'm not sure of the process,
23 the - there is approximately 80 employees. Eighty composed -
24 comprised of full and part time employees, correct?

25 MS. JEFFERSON: That is correct, Your Honor. It is

1 the - the Asset Purchase Agreement does not obligate the
2 Buyer to retain all those employees. But it is our intention
3 to do so, to the greatest extent possible. And it - it was
4 an item that we have teed up for the period in between entry
5 of the Sale Order and closing, to - to figure out exactly how
6 we are going to handle that, with the Debtor. But it is our
7 intention to keep as many of the employees as we possibly can,
8 and keep this as a-

9 THE COURT: -- One of the questions - one of the
10 questions that no one asked, and I guess I sort of thought
11 about it in a - in a passing [inaudible]. I understand that
12 the principle of the company is not being retained. Is any
13 of his family members being retained as employees, or have
14 any post-sale agreements, with the Buyer?

15 MS. JEFFERSON: There are none.

16 MR. BURNETT: Your Honor, I believe he testified - oh,
17 I'm sorry. Go ahead, Ms. Jefferson. I believe he testified
18 the answer to those questions are no. And the answer - the
19 answer that counsel-

20 THE COURT: -- Well, no, it was as to him. I don't
21 think - did Mr. Callahan ask him about his family?

22 MR. BURNETT: He - he did, Your Honor.

23 THE COURT: Oh, okay. I must have missed it. I'm
24 sorry. All right. Anybody, I mean I think the Order is fine.
25 I don't have any other questions. Does anyone else have any

1 issue with respect to the proposed Order, since it was filed
2 this morning? Did every - I am assuming everybody had an
3 opportunity to review. Is there any comment, questions,
4 concerns, that anyone has with respect to the Order that I
5 would be entering approving the sale?

6 Okay, hearing no comments, I will approve the sale
7 and issue - and sign the Order, the proposed Order that has
8 been submitted by the Debtor. Is there anything else that
9 anyone else wish to bring to the Court's attention, or think
10 that the Court needs to address, with respect to this matter
11 - for today?

12 MS. JEFFERSON: None from the Buyer. Thank you for
13 your time, Your Honor.

14 MR. BURNETT: Thank you very much, Your Honor. We
15 greatly appreciate your time.

16 THE COURT: Okay. Having - having heard no comments,
17 this will conclude the matters that are scheduled before the
18 Court today. Court is adjourned until tomorrow at 9:30.
19 Thank you counsel, and thank you for your indulgence.

20 MS. JEFFERSON: Thank you.

21 MR. BURNETT: Thank you very much.

22 FEMALE VOICE: Thank you, Your Honor.

23 THE COURT: All right. Bye bye.

24 (Proceedings concluded at 3:47 p.m.)

25

CERTIFICATE

2 I, Joyce A. Waser, court approved transcriber, certify that
3 the foregoing is a correct transcript from the official
4 electronic sound recording of the proceedings in the above-
5 entitled matter.

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10 JOYCE A. WASER

October 11, 2021

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